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PACIFIC TELESIS
Group · Washington

March 17, 1997

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *CC Docket No. 97-11, Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its *"Reply Comments"* in the above proceeding.

An electronic version of this submission has been provided directly to the Secretary, Network Services Division, Common Carrier Bureau, and International Transcription Service.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Denice Harris

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996:	CC Docket No. 97-11

REPLY COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group respectfully replies to comments filed in this proceeding to implement the 1996 Telecommunications Act directive that the Commission permit any common carrier to be exempt from the requirement of Section 214 for the extension of any line.[1] In addition, the FCC proposes to forbear from enforcing Section 214 requirements for "new lines" for price cap carriers, average-schedule carriers and non-dominant domestic carriers and proposes streamlined discontinuance procedures for dominant carriers.

I. Introduction

Our Comments support the Commission's proposals and recommend that the Commission consider increases in network capability as an "extension". Most comments support a single definition for "extension"; forbearance from exercising Section 214 authority over

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[1] Section 402(b)(2)(A) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

"new" lines for price cap carriers, average schedule carriers and domestic non-dominant carriers; and applying a streamlined Section 214 discontinuance process to dominant carriers. In these reply comments, we primarily respond to MCI's opposition to forbearance, DNSI's opposition to the use of a streamlined discontinuance process by dominant carriers and AT&T's request to eliminate the presumption of the streamlined discontinuance rules. The arguments made in opposing the Commission's proposals on these issues do not provide sufficient reasons for the Commission to reverse its well-founded conclusions.

II. A Single Definition For "Extension" Offers Administrative And Competitive Advantages.

Most comments on the definition of "extension" urge the Commission to adopt a single definition and avoid the distinction between new lines and extensions. All line augmentations would be line extensions. This approach promotes administrative simplicity and competitive parity. Commentors suggest that the geographic focus of the Commission proposed definition of an extension leads to impractical and anticompetitive results. We agree that limiting the definition of extension to expansion into previously unserved geographic territory leads to awkward results: A carrier's first foray into previously unserved territory would not require Commission authorization but subsequent installations would. That result can also give carriers improper investment incentives in order to minimize delay caused by the Section 214 regulatory process. We agree that a single definition of extension to include all line augmentations offer significant advantages over the Commission's proposed definition.

III. The Commission Should Reject Arguments That MCI Derives From A Faulty Reading Of Section 10(a).

MCI is the sole commentor to urge that the Commission should not forbear from enforcing Section 214 for new lines for price cap LECs.[2] It alleges that the Commission does not provide sufficient evidence to satisfy the Section 10(a) standard for forbearance. Specifically, MCI alleges that the FCC failed to show that Section 214 requirements are not necessary to ensure a carrier's practices and classification are just and reasonable. MCI also alleges that the FCC failed to provide evidence that forbearance will promote competitive market conditions and enhance competition.

MCI misconstrues Section 10(a) in its attempt to show that the Commission has not met its evidentiary requirement. Neither the statutory language nor legislative intent supports either of MCI's assertions. MCI first claims that the Commission must provide evidence that Section 214 is not necessary to ensure that practices and classifications as well as rates are just and reasonable. MCI, p. 10. Even a casual reading of the statutory language clearly shows, however, that Congress used the disjunctive "or". As a result, forbearance is warranted where the Commission finds that Section 214 is not necessary to ensure at least one of the enumerated categories. The Commission has made that finding in regards to price cap carriers' charges. It concludes that the price cap structure ensures that price cap carriers' charges are reasonable. Thus, enforcing Section 214 is not necessary to ensure reasonable charges for price cap carriers. Moreover, as the Commission explains, the Section 214 process is not designed to prevent

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[2] Comments of MCI Communications Corporation, February 24, 1997 ("MCI").

abusive practices; other rules specifically address anticompetitive and discriminatory practices. NPRM, para. 45.

MCI further alleges that the Commission must make a showing that "forbearance will promote competition and enhance competition." MCI, p. 10. A close reading of Section 10(b) shows that Congress instructs the Commission to *consider* whether forbearance will promote competition. The Commission did so and tentatively concluded that forbearance would stimulate competition by facilitating entry of new carriers, price decreases and improved offerings. NPRM, para. 48. Forbearance from Section 214 review would eliminate a process that:

> ... currently appears to impose regulatory barriers to the entry of new carriers and the creation or expansion of facilities by all carriers because carriers proposing projects that do not fall within one of the Commission's blanket authority rules must engage in a potentially lengthy Commission review of their proposals and disclose potentially competitively sensitive information to rivals. NPRM, para. 48.

Finally, MCI is just plain wrong in arguing that the Commission must, in effect, guarantee that carriers will not engage in unjust or unreasonably discriminatory practices and classifications in the future as a result of the Commission's forbearance from enforcing Section 214. MCI, p. 11. No such Section 10(a) requirement exists and the Commission must not permit MCI to interject it in order to deter competition.

IV. Section 63.71 Streamlined Discontinuance Should be Extended to Dominant Carriers.

The Commission's proposal to apply its current streamlined discontinuance procedures to dominant carriers appears to be significantly misunderstood based on comments opposing the rule change. DNSI opposes such a change because it believes it would "greatly increase the ability of dominant LECs to withdraw tariffed services that are invaluable to consumers and that are essential to competitors thereby reducing competition in their service territories."[3] DNSI, p. 2. The streamlined discontinuance process does not give dominant LECs *carte blanche* to withdraw service without Commission scrutiny. Section 63.71 requires a carrier to file a significant amount of information that will enable the Commission to evaluate the public interest in any request to discontinue service. Customers will continue to have notice and the opportunity to object to the discontinuance. The Commission can still notify an applicant that the request will not be automatically granted within (the proposed) sixty day period following the filing of the streamlined application. Thus, DNSI exaggerates the ability of the carrier to withdraw services that are "invaluable to consumers or essential to competitors." Consumers or competitors would certainly object to the withdrawal of such services and the Commission would likely announce that the grant will not automatically become effective, and thereafter subject the application to further review. The Commission correctly notes that the 1996 Act did not alter its authority with respect to discontinuances or reductions in services. NPRM, para. 70. The Commission can deny even streamlined applications.

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[3] Limited Comments of Digital Network Services, Inc., February 24, 1997 ("DNSI").

On the other hand, by not applying the streamlined discontinuance process to dominant carriers, the Commission will ensure that carriers will continue to follow the longer, more time-consuming and costly process for every discontinuance, reduction or impairment of service -- even non-controversial ones. Requiring such unnecessary regulation would be inconsistent with the 1996 Telecommunications Act goal to reduce regulation whenever possible. Nor is it supportive of the goal to promote competition. As the Commission noted, barriers to exit can inhibit market entry and competition. NPRM, para. 70. The Commission is correct in concluding that the streamlined discontinued process strikes an appropriate balance between protecting consumers and reducing unnecessary barriers to exit for all carriers. The Commission should permit dominant carriers to utilize the streamlined procedure of Section 63.71.

AT&T does not object to the Commission applying Section 63.71's streamlined discontinuance process to dominant carriers.[4] However, it argues that carriers, like itself, that depend on dominant local carriers' access offerings could have "serious difficulties" in securing alternative suppliers of access service. That, AT&T says, is sufficient basis for the Commission to eliminate the presumption that proposed service discontinuances by incumbent local exchange carriers will be granted by the Commission.

The Commission should reject AT&T's proposal. Section 63.71 clearly explains that the presumption does not operate if "customers would be unable to receive service or a reasonable substitute from another carrier." If AT&T depends on a local carrier's offering, and

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[4] AT&T Comments, February 24, 1997 ("AT&T").

there is no substitute for that service, the presumption will not apply. Consequently, there is no reason to eliminate a presumption that otherwise benefits both the Commission and carriers.

Respectfully submitted,

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